

## I. INTRODUCTION

On October 3, 2015, at approximately 3:23 a.m., Sergeant A discharged his firearm twice at a moving vehicle operated by Subject 1. This incident was initially registered under Log# 1077419 and classified as “shots fired without hits.” Sergeant A stated that he observed Subject 1 drive a vehicle that was missing its front driver’s side tire into a forest preserve area. Sergeant A approached Subject 1’s vehicle on foot and announced his office. The vehicle reversed toward Sergeant A who then discharged his firearm twice, without striking Subject 1. Subject 1, who had bloodshot eyes and smelled of alcohol, was placed in custody and later charged with Driving Under the Influence. On January 25, 2016, Independent Police Review Authority (IPRA) Deputy Chief Administrator A initiated Log # 1078998, alleging that Sergeant A violated General Order G03-02-03 by discharging his firearm at a moving vehicle.

## II. ALLEGATIONS

It is alleged that on October 3, 2015, at approximately 3:23 a.m., in the vicinity of XXXX W. Bryn Mawr Avenue, the **accused, Sergeant A:**

1. Discharged his firearm at a moving vehicle, in violation of General Order G03-02-03.

## III. INVESTIGATION

The **Department Reports (RD# HY447697, Event #1527602144)** document that Sergeant A stated to the responding detectives that he was sitting in his marked squad car in the parking lot of the Starbucks Coffee shop at the corner of Peterson Avenue and Rogers Avenue. Sergeant A observed a Mercedes-Benz SUV driving eastbound on Peterson Avenue with sparks coming out from the front driver’s side wheel. Sergeant A observed the Mercedes-Benz stop at the intersection, turn and head in a southwest direction on Rogers. Sergeant A followed the vehicle without activating his squad car’s emergency equipment. Sergeant A stated that the vehicle was traveling at approximately 10 to 15 miles per hour as it drove through a residential neighborhood. Sergeant A followed the vehicle westbound on Bryn Mawr Avenue toward the dead end of a residential block near the forest preserve. The vehicle then headed into the woods. Sergeant A illuminated his spotlight on the Mercedes-Benz and began radioing his location to OEMC. The vehicle stopped approximately ten to twenty feet into the woods, where it appeared stuck on a tree. Sergeant A observed the vehicle moving back and forth multiple times in an apparent effort to dislodge itself from the tree. Eventually, the vehicle dislodged itself and continued driving in a northwest direction through the woods. Sergeant A activated the emergency equipment and exited his squad car.

Sergeant A followed the vehicle on foot through the woods. Sergeant A stated that he unholstered his firearm and held it down by his side, at the ready position. Sergeant A stated that he did not know how many people were inside the vehicle, due to the dark-tinted windows. The vehicle continued approximately fifty feet into the woods and then stopped abruptly. The vehicle shifted into reverse and quickly reversed toward Sergeant A. The sergeant stated that he feared that the vehicle may strike him. As a result, Sergeant A raised his firearm and fired two rounds at the vehicle. After he fired the second shot, the vehicle stopped shifted gears into drive and headed away from him farther into the woods. The vehicle eventually stopped approximately fifty feet

from where Sergeant A fired the shots. Sergeant A approached the passenger side of the vehicle and opened the front passenger door. Sergeant A then observed Subject 1 in the driver's seat. Subject 1 was conscious but covered in vomit and urine. Sergeant A reached over and turned the vehicle's ignition off.

Sergeant A indicated to the responding detectives his exact location when he fired his weapon. The detectives noted that Sergeant A was surrounded by trees to his right and a steep down slope on his left side at the time of the threat. Subject 1 refused to provide a statement to the detectives.

Additionally, assisting Police Officer A responded to the Area North<sup>1</sup> police station, where he met with Sergeant A. Sergeant A informed Officer A that he observed Subject 1 committing various traffic violations, such as driving her vehicle with only three (3) tires and driving off the roadway into the forest preserve. Sergeant A pursued the vehicle. When Sergeant A exited his vehicle to pursue Subject 1's vehicle on foot, Subject 1 reversed her vehicle quickly in the direction of Sergeant A, causing him to fear for his life, at which time he raised his weapon and fired at the Mercedes-Benz. Sergeant A stated that when he observed her, Subject 1 had a very strong odor of alcohol on her breath, her eyes were bloodshot and glassy, she was slurring her words, and she had vomited on her shirt and inside her vehicle.

Officer A spoke with Subject 1 and detected a strong odor of alcohol emanating from her breath. Officer A observed that Subject 1's eyes were bloodshot and glassy. The officer performed a-Horizontal Nystagmus Test,<sup>2</sup> which showed six signs of alcohol consumption. While standing, Subject 1 swayed greatly from side to side and in a circular motion; Subject 1 also displayed vertical nystagmus and a lack of convergence. Officer A began explaining the walk and turn test and Subject 1 responded that she did not want to take the test because she was too cold. Officer A then offered the one leg stand and Subject 1 shook her head side to side, indicating "no." Subject 1 refused to take a chemical test. (Att. 6, 11)

An **OEMC Event Query** documented that Sergeant A conducted a street stop at XXXX N. Rogers Avenue/ XXXX W. Peterson Avenue on October 3, 2015, at approximately 3:18 a.m. Sergeant A reported at approximately 0322 hours that the vehicle was "going into the forest preserve." At approximately 3:23 a.m., Sergeant A reported shots were fired by the police. Sergeant A then indicated at approximately 3:24 a.m. one person was in custody and there were no injuries. (Att. 9)

A **Tactical Response Report** completed by Sergeant A documented that Subject 1 "used force likely to cause death or great bodily harm." Sergeant A responded with the use of his firearm. The narrative related similar information as documented in the Original Case Incident Report. (Att. 7)

The **Officer's Battery Report** for Sergeant A documented that he did not sustain any injuries. (Att. 8)

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<sup>1</sup> XXXX W. Belmont Ave. Chicago, IL 60618

<sup>2</sup> A Horizontal Gaze Nystagmus Test is a standardized field sobriety test administered by police officers.

**A Search for Video Recordings** from the in-car camera video surveillance system of Vehicle #8915 was met with negative results.<sup>3</sup> <sup>4</sup> (Att. 19)

**Evidence Technician photographs** depict the scene of the area from various angles. Photographs were also taken of the Mercedes-Benz located in the woods. The photographs do not depict any bullet holes on the vehicle. In addition, the photographs depict the vehicle stopped against a log on the ground and shards of wood thrust through the windshield. The photographs also depict multiple pictures of Sergeant A and Subject 1. (Att. 24, 25, 26)

**Attempts to obtain a statement from Subject 1** were unsuccessful. On February 17, 2016, Subject 1's attorney, Attorney 1, related that Subject 1 did not want to provide a statement to IPRA. (Att. 30)

In his **statement to IPRA** on May 4, 2016, the accused, **Sergeant A** stated that on October 3, 2015, he was in a marked squad car parked in front of a Starbucks Coffee shop at the corner of Peterson and Rogers Avenues. Sergeant A heard a loud "screeching or metal-on-metal noise." Sergeant A then observed a mid-size Mercedes-Benz SUV slowly pass in front of him going eastbound on Peterson Avenue with sparks coming out from the front end.<sup>5</sup> Sergeant A began to follow the vehicle on Peterson Avenue. The vehicle came to a stop at the intersection of Peterson and Rogers Avenues and made a right turn onto Rogers Avenue. Sergeant A stated that once he was on Rogers Avenue, he notified OEMC of his location and what he observed and requested additional units for assistance. At some point, the vehicle turned westbound on Bryn Mawr Avenue and Sergeant A continued to follow.

The vehicle continued until it came to a dead end on Bryn Mawr. The vehicle stopped and Sergeant A stopped his vehicle approximately ten to fifteen feet behind. Sergeant A reported his location over the radio and waited for assisting units to arrive. Sergeant A stated that he wanted to keep a safe distance away from the vehicle because the windows were heavily tinted and he could not see how many occupants were inside. The vehicle remained stationary for less than one minute and then made a left turn and drove into the forest preserve in a southwest direction. Sergeant A activated his emergency light bar, turned on his spotlight, and pointed it in the direction of the vehicle. Sergeant A began to follow the vehicle but stopped just short of the forest preserve.

The vehicle continued into the forest preserve in a southwest direction until it became stuck. Sergeant A observed the vehicle rocking back and forth in an apparent effort to free itself from the obstruction. The vehicle eventually became free and continued to drive farther into the woods. Sergeant A then decided to follow the vehicle on foot so that he could maintain direct visual contact with it because of its suspicious nature. As he entered the woods, Sergeant A took his firearm out of its holster and kept it by his right side. Sergeant A stated the vehicle was traveling

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<sup>3</sup> Sergeant A stated that his vehicle's surveillance system was not functioning at the time of the shooting. A search for repair tickets regarding the video surveillance system revealed two repair tickets: one for May of 2015 and the second for December of 2015. (Att. 40, 41)

<sup>4</sup> Special Order S03-05, in effect at the time of the incident, mandated that "Note: Members will immediately notify a supervisor if, at any time, the in-car video system is inoperable, damaged, the equipped vehicle becomes inoperable, or the remote transmitter/audio recorder is missing." (Att. 42, VI, A, 1) The special order at the time did not require that Sergeant A obtain a repair ticket for the nonoperational video system. In response to the IPRA investigator's question of whether a repair ticket had been obtained, the sergeant replied, "I don't recall."

<sup>5</sup> It was later determined that the sparks were caused by the left front wheel which was missing its tire.

at a slow speed because of the foliage and brush and one missing tire. The sergeant maintained a distance of six to ten feet from the vehicle. Sergeant A stated that his footing was “unsteady” because of the uneven ground due to the trees and branches. As he neared the vehicle, Sergeant A began to give verbal commands for the driver to stop and announced “Police.” Several moments later, the vehicle stopped and immediately shifted into reverse toward the sergeant. Sergeant A stated that he tried to get out of the vehicle’s path but could not go anywhere because of the terrain. As a result, Sergeant A, fearing for his life, raised his firearm and discharged two rounds at the vehicle.<sup>6</sup>

The vehicle came to a stop and then drove forward before becoming wedged between several trees and brush. Sergeant A holstered his firearm and approached the front passenger side door and opened it. Sergeant A looked inside the vehicle and observed the driver, now known as Subject 1, seated in the driver’s seat. Assisting officers arrived at that time and placed Subject 1 in custody. According to Sergeant A, Subject 1 “smelled of alcohol. She had vomited and urinated on herself.”<sup>7</sup> In response to the allegation that he discharged his firearm at a moving vehicle in violation of General Order G03-02-03, Sergeant A denied that his actions violated the general order. Sergeant A stated that the order allowed officers to use deadly force when a vehicle is driving toward them and the officer has no alternative or avenue of escape. Sergeant A stated that he had no alternative but to discharge his firearm because he was in fear of his life and had no avenue of escape when the vehicle reversed toward him. Sergeant A was asked where he was aiming his firearm and Sergeant A responded that he was aiming in the direction of the vehicle but did not recall where exactly. (Att. 34, 35, 36, 37)

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Major Case Specialist

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Supervising Investigator

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<sup>6</sup> Sergeant A examined the photographs but could not pinpoint exactly where he was when he discharged his weapon at the vehicle.

<sup>7</sup> Att. 35 at 45.

## IV. ANALYSIS

### A. Applicable Rules and Law

#### 1. Use of Force Deadly Force

Consistent with Illinois state law as codified at 720 ILCS 5/7-5, according to the Chicago Police Department's General Order 03-02-03, Section II, A:<sup>8</sup>

A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or:
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of a deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

General Order 03-02-03, Section III, titled "Department Prohibitions for Use of Deadly Force" states that use of firearms in the following ways is prohibited:

A. Firing into crowds.

B. Firing warning shots.

C. Firing into buildings or through doors, windows, or other openings when the person lawfully fired at is not clearly visible.

D. Firing at a subject whose action is only a threat to the subject himself (e.g., attempted suicide).

E. Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.

Finally, General Order 03-02-03, Section IV, titled "Affirmation of Protection of Life Policy" states that "[s]worn members will not unreasonably endanger themselves or another person to conform to the restrictions of this directive."

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<sup>8</sup> COPA references the version of General Order 03-02-03 in effect on October 3, 2015.

Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); *see Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (*citing Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; *see also Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003)

## 2. Preponderance of Evidence Standard

The standard of proof in administrative cases investigated by COPA is a preponderance of the evidence. CPD Complaint Register Matrix Guidelines (hereinafter, CR Guidelines). "A preponderance of evidence can be described as evidence that makes it more likely than not that the alleged misconduct took place." *Id.*; *see also Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred than that it did not occur, even if by a narrow margin (i.e., at least a 51 percent likelihood that the facts supporting the occurrence of misconduct are true), then the standard of proof has been met. CR Guidelines.

## B. Analysis of the Allegation against Sergeant A

The evidence demonstrates that Sergeant A discharged his firearm two (2) times on October 3, 2015. Sergeant A asserts that the Mercedes-Benz posed an imminent risk of death or great bodily injury to him and that he had no alternative or avenue of escape other than discharging his firearm two times at the Mercedes-Benz.

However, as outlined below, COPA finds that Sergeant A's actions violated General Order 03-02-03 by firing at or into a moving vehicle. COPA finds that Sergeant A would not have unreasonably endangered himself or any other person by failing to discharge his firearm at or into the Mercedes-Benz. Therefore, Sergeant A was required to comply with CPD General Order 03-03-02's prohibition on firing at or into a moving vehicle.

1. **General Order 03-03-02 only permits CPD officers to fire at or into a moving vehicle when the failure to fire would unreasonably endanger the officer or another person.**

General Order 03-02-03 must be interpreted sequentially and as a whole. Section I of General Order 03-02-03 sets forth the purpose of the directive. Section II of General Order 03-02-03 lays out specific circumstances when the use of deadly force is justified.<sup>9</sup> However, Section III of General Order 03-02-03 then expressly prohibits CPD officers from using firearms in specific situations.

Section III of General Order 03-02-03 unambiguously and explicitly prohibits officers from “[f]iring at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.”<sup>10</sup> In other words, even when the use of deadly force is otherwise justified and permitted pursuant to Section II of General Order 03-02-03, Section III still prohibits officers from firing at or into a moving vehicle when the vehicle itself is the only force used against the officer or another person.

Finally, Section IV of General Order 03-02-03 provides that officers shall not *unreasonably* endanger themselves or another person in order to comply with the prohibitions contained in Section III.<sup>11</sup> In other words, CPD officers do not have to comply with Section III of General Order 03-02-03’s prohibitions when the failure to use their firearm would unreasonably endanger the officer or another person.

The exception to the prohibition on firing into moving vehicles contained in Section IV of General Order 03-02-03 must be read in context of General 03-02-03 as a whole.<sup>12</sup> Unlike Section II which permits the use of deadly force when the officer *reasonably* believes deadly force is necessary to prevent death or great bodily harm to the sworn member or to another person, Section IV applies only when the officer’s failure to use deadly force would *unreasonably* endanger the officer or a third party.<sup>13</sup> This inverted phrasing is not accidental and it is a tenant of statutory interpretation that “[e]ach word, clause, and sentence should be given effect so as not to be rendered superfluous.” *Chicago Teacher’s Union, Local No. 1. v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15. Furthermore, the Superintendent specifically modified General

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<sup>9</sup> See *supra* Section IV(A)(1).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 188 (1990) (“[I]n ascertaining the meaning of a statute, the statute should be read as a whole with all relevant parts considered.”). Courts apply the same rules of construction to administrative rules and regulations as they do to statutes. *Hetzer v. State Police Merit Board*, 49 Ill. App. 3d 1045, 1047 (1977).

<sup>13</sup> Notably, Section IV also does not include any language that tracks the second prong of Section II which permits officers to use deadly force to prevent an arrest from being defeated by resistance or escape under specified circumstances.

Order 03-02-03 in 2015 to remove language that permitted officers to fire into a moving vehicle simply to prevent death or serious bodily injury to an officer or another person.<sup>14</sup>

The current version of CPD General Order 03-02-03 closely mirrors the 2006 model policy promulgated by the International Association of Chiefs of Police (IACP) and many other police departments in prohibiting the use of firearms against a moving vehicle when the vehicle is the only threat.<sup>15</sup> These policies recognize that experts find firing into a moving vehicle to be extremely dangerous and usually ineffective.<sup>16</sup> First, bullets fired from handguns are unlikely to be effective against an automobile.<sup>17</sup> Second, if the driver is hit by gunfire, the vehicle is likely to crash in an uncontrolled manner.<sup>18</sup> Third, it is extremely difficult to hit a driver in a moving vehicle with a bullet and there is a significant risk of accidentally striking a passenger or bystander with gunfire.<sup>19</sup> Fourth, if the driver is not hit by gunfire, he/she is likely to drive even more recklessly to escape thereby increasing the danger the vehicle itself poses to officers, other occupants, and bystanders. Finally, firing at a moving vehicle may lead other officers in the area to mistakenly believe that the gunfire is coming from the vehicle itself which increases the risk that another officer will mistakenly use deadly force on an unarmed subject.

To apply the exception to the prohibition on firing at or into a moving vehicle broadly would make the prohibition entirely meaningless. The use of a vehicle as force inevitably puts officers and civilians at risk of death or great bodily harm. The exception would swallow the rule. COPA will not interpret General Order 03-02-03 to make the prohibition on firing at or into a moving vehicle superfluous.<sup>20</sup> Read in context, the exception applies narrowly to cases where specific, unusual facts and circumstances demonstrate that complying with the prohibition would *unreasonably* endanger the officer or another person. The evidence in this case does not support the existence of such facts or circumstances at the time Sergeant A discharged his weapon at Subject 1's vehicle.

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<sup>14</sup> Compare CPD General Order 03-02-03 (effective date February 10, 2015) to CPD General Order 03-02-03 (effective date October 1, 2002).

<sup>15</sup> INT'L ASS'N OF CHIEFS OF POLICE, MODEL POLICY: USE OF FORCE 1 (Feb. 2006), available at <https://www.documentcloud.org/documents/2303826-useofforcepolicy.html>.

<sup>16</sup> See IACP NAT'L LAW ENFT POLICY CTR., USE OF FORCE: CONCEPTS AND ISSUES PAPER 7 (updated Feb. 2006), available at <https://www.documentcloud.org/documents/2303827-useofforcepaper.html>; John A. Grosst, *Essay: Unguided Missiles: Why The Supreme Court Should Prohibit Police Officers From Shooting at Moving Vehicles*, 163 U. PA. L. REV. ONLINE 135 (2016).

<sup>17</sup> See IACP NAT'L LAW ENFT POLICY CTR., USE OF FORCE: CONCEPTS AND ISSUES PAPER 7 (updated Feb. 2006),

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See *Kraft, Inc.*, 138 Ill. 2d at 188 (“A statute should be construed so that no word or phrase is rendered superfluous or meaningless.”).

**b. In light of General Order 03-02-03's prohibition on firing at or into a moving vehicle, a reasonable officer would not have discharged his or her firearm under the facts and circumstances that confronted Sergeant A**

COPA finds that based on the totality of the circumstances facing Sergeant A at the time he discharged his firearm, a reasonable officer would not have believed that complying with CPD General Order 03-02-03's prohibition on firing at or into a moving vehicle would *unreasonably* endanger himself/herself or another person and therefore would have complied with the prohibition.

For a number of reasons, a reasonable officer would not have fired at or into the Mercedes-Benz under the circumstances that Sergeant A faced on October 3, 2015.

First, Sergeant A had no specific information from which to discern that the driver or occupant(s) of the Mercedes-Benz had committed or would commit a violent crime prior to the incident.<sup>21</sup> Sergeant A did not have any information regarding the Mercedes-Benz except his observations of the vehicle driving without its driver's side front tire.<sup>22</sup> Sergeant A specifically noted that he did not even observe the Mercedes-Benz commit a traffic offense other than it driving on three wheels and it driving into the forest preserve.<sup>23</sup>

Second, Sergeant A did not know whether the Mercedes-Benz contained occupants besides the driver and did not take into account the risk the gunfire posed to possible passengers. Although the Mercedes-Benz did not contain any passengers, Sergeant A did not know this at the time he discharged his firearm.<sup>24</sup> A reasonable officer would not fire at or into a moving vehicle without assessing the risk of killing or causing great bodily injury to a passenger, whether through gunfire or a crash. A reasonable officer would recognize that a passenger in a vehicle is not in a position to control and/or stop the vehicle and may not be involved in any criminal activity at all. In this case, Sergeant A is unable to recall what part of the vehicle he aimed at and simply asserted he fired in the direction of the vehicle.<sup>25</sup> It is unlikely that Sergeant A would simply forget aiming at a specific part of the vehicle such as the driver<sup>26</sup> or one of the tires. Therefore, COPA finds that

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<sup>21</sup> Att. 35 at 10, 48-51.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 50.

<sup>24</sup> *Id.* at 12, 15, 38.

<sup>25</sup> *Id.* at 51.

<sup>26</sup> COPA notes that it is unlikely that Sergeant A could have shot at the driver of a vehicle when it was traveling in reverse towards him without firing through the back windshield which inevitably would have put any passenger sitting behind the driver in the backseat at serious risk of accidentally being hit by gunfire.

Sergeant A merely attempted to fire at the vehicle generally without aiming for the driver or a wheel.<sup>27</sup>

Third, a reasonable officer would have recognized that the Mercedes-Benz did not pose an imminent threat of death or great bodily harm and that alternatives existed besides firing at or into the vehicle. COPA finds that Sergeant A's assertion that he was "six to ten feet" behind the Mercedes-Benz when it reversed "abruptly" and "quickly" incredible because it is contradicted by the physical evidence and common-sense.<sup>28</sup> Sergeant A stated he did not know how fast the Mercedes-Benz was traveling in reverse towards him.<sup>29</sup> The Mercedes-Benz almost certainly could not have moved "quickly" in reverse when it only had three wheels and was traveling off road in a forest preserve. In fact, Sergeant A acknowledged throughout his interview with IPRA that the vehicle was moving through the forest preserve "very slow 'cause there's a lotta foliage and brush . . . and it had one tire missing."<sup>30</sup> He further described the vehicles movement through the wooded terrain by stating, "It was all a lotta underbrush and she was driving, the vehicle was driving over these branches and intermittently slowing down, getting stuck. But it was able to continue to forge its way through the woods."<sup>31</sup>

Sergeant A also could not have been standing as close to the Mercedes-Benz as he claims. A vehicle traveling at even 5 miles per hour would cover 7.33 feet per second.<sup>32</sup> Therefore, even if the Mercedes-Benz was traveling five miles per hour it would have been right on top of Sergeant A's position within a *second* if he was only "six to ten feet" behind the Mercedes-Benz. It is extremely likely that a vehicle moving "quickly" would have struck Sergeant A if he was standing six to ten feet behind it and did not move out of the way. Indeed, Sergeant A stated that the vehicle was five or six feet from him when it *stopped* going in reverse. It is implausible that the vehicle could have stopped five to six feet from Sergeant A if was moving "quickly" unless there was significant distance between Sergeant A and the vehicle. Furthermore, Sergeant A's two shots did not strike the Mercedes-Benz.<sup>33</sup> It is extremely unlikely that Sergeant A, an experienced officer, would have missed the Mercedes-Benz SUV, a large vehicle, unless there was significant distance between himself and the vehicle.

Finding that the Mercedes-Benz was moving too quickly for Sergeant A to escape its path at the time he discharged his weapon is logically inconsistent with the evidence. At all other times, other than when Sergeant A discharged his weapon, the vehicle was moving slowly through the woods. There is no evidence that Subject 1 intentionally attempted to strike Sergeant A or that she even knew that he was pursuing her or behind her vehicle. Also, the vehicle was missing its front driver's side tire. Therefore, to conclude that the only time Subject 1's vehicle moved quickly was when she reversed towards Sergeant A would defy the facts and evidence.

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<sup>27</sup> Sergeant A stated that he did not use his sight.

<sup>28</sup> Sergeant A did not state that the vehicle reversed "abruptly" or "quickly" in his interview with IPRA, but this language is used in the Case Supplementary Report written by the detectives. Att. 13.

<sup>29</sup> Att. 35 at 43.

<sup>30</sup> *Id.* at 25; *see also id.* at 39 ("I, I was kinda keepin' pace with the vehicle as it was going through. Cause it wasn't driving fast. It was just slowly foraging through the woods.")

<sup>31</sup> *Id.* at 27.

<sup>32</sup> There are 5,280 feet in a mile. Therefore, a car traveling at 5 miles per hour travels 26,400 feet per hour, 440 feet per minute, and approximately 7.33 feet per second.

<sup>33</sup> Att. 7; Att. 13; Att. 14.

Sergeant A asserts, in a conclusory fashion, that he could not move out of the way of the Mercedes-Benz because of “all the trees and the underbrush” to his right and the sloped terrain leading to the Chicago River on his left.<sup>34</sup> While COPA recognizes that it was dark and that the slope leading into the Chicago River likely did represent a legitimate barrier to Sergeant A’s left, the photographs of the scene do not reflect that the trees and foliage would have reasonably prevented Sergeant A from stepping out of the way. In fact, the trees would have created barrier between Sergeant A and the Mercedes-Benz. More importantly, Sergeant A reasonably could have retreated backwards, particularly in light of the fact that Sergeant A had not observed the Mercedes-Benz driving recklessly, with the exception of the missing wheel and the vehicle driving into the forest preserve, and he had no legitimate reason to believe that the driver of the Mercedes-Benz intended to run him over.

The totality of the circumstances makes it more likely that Sergeant A was not entrapped or otherwise precluded from escaping the path of the Mercedes-Benz. Although the wooded terrain presented obstacles, it was an open area and not an enclosed space. Sergeant A was not immediately surrounded by large structures, such as buildings or walls, nor were any objects present that he could not navigate around, such as other cars or dumpsters.

Fourth, a reasonable officer would have recognized that the use of firearm against the Mercedes-Benz would not have been likely to protect human life. Moreover, a reasonable officer would have recognized that the use of a firearm against the Mercedes-Benz would not immediately stop the vehicle; rather if a bullet struck the driver the vehicle would likely continue to travel in an uncontrolled fashion before it crashed. In this case, Sergeant A could not explain where he was aiming, simply stating that he “fired at the vehicle.” The use of a firearm is particularly likely to be ineffective when it is not aimed at the driver or at a target that would otherwise stop the vehicle from moving, such as a wheel.

For these reasons, a reasonable officer would not have fired at the Mercedes-Benz in light of the General Order 03-02-03’s prohibition on firing at or into a moving vehicle when the vehicle is the only force used against the officer.

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<sup>34</sup> See Att. 13; Att. 35 at 30, 36-37.

**IV. CONCLUSION AND FINDING**

After careful examination of the evidence and thorough analysis of the applicable law, COPA recommends the following finding:

The allegation that Sergeant A discharged his firearm at a moving vehicle, in violation of General Order G03-02-03 is **SUSTAINED**.

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Deputy Chief